

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SCOTT SHEWBRIDGE,  
Plaintiff,

NO. CIV. S-05-0740 FCD EFB

v.

MEMORANDUM AND ORDER

EL DORADO IRRIGATION DISTRICT,  
a municipal corporation; ANE  
DEISTER, DAVID POWELL, THOMAS  
CUMPSTON, GEORGE WHEELDON,  
GEORGE OSBORNE,

Defendants.

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This matter is before the court on defendants' motion for reconsideration of the court's April 30, 2007 order denying their motion to modify the pretrial scheduling order ("PSO") to permit the filing of a dispositive motion on defendants' affirmative

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1 defense of res judicata.<sup>1</sup> Fed. R. Civ. P. 59(e), 60(b).<sup>2</sup> In  
 2 said order, the court found that defendants had not diligently  
 3 sought to modify the PSO, and thus relief could not be granted  
 4 pursuant to Federal Rule of Civil Procedure 16(b), or  
 5 alternatively, that defendants waived the defense. (Docket #53.)  
 6 Defendants now move for reconsideration of that latter finding,  
 7 arguing the court committed "clear error" in concluding that  
 8 defendants otherwise waived the defense. For the reasons stated  
 9 below, defendants' motion for reconsideration is DENIED.

10 Federal Rules of Civil Procedure 59(e) and 60(b) are  
 11 "extraordinary remed[ies] to be used sparingly in the interests  
 12 of finality and conservation of judicial resources." Kona  
 13 Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th  
 14 Cir. 2000). Thus, the Ninth Circuit has made clear that a motion  
 15 for reconsideration should not be granted "'absent highly unusual  
 16 circumstances, unless the district court is presented with newly  
 17 discovered evidence, committed clear error, or if there is an  
 18 intervening change in the controlling law.'" Id. (citation  
 19 omitted.) When a motion for reconsideration is based on a claim  
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21 <sup>1</sup> Because oral argument will not be of material  
 22 assistance, the court orders this matter submitted on the briefs.  
See E.D. Cal. L.R. 78-230(h).

23 <sup>2</sup> Where the court's ruling has resulted in a final  
 24 judgment or order, a motion for reconsideration may be based  
 25 either on Rule 59(e) (motion to alter or amend judgment) or Rule  
 26 60(b) (motion for relief from judgment) of the Federal Rules of  
 27 Civil Procedure. See School Dist. No. 1J, Multnomah County v.  
ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). Because  
 28 defendants' motion was filed more than ten days after entry of  
 the court's order, the court will consider the instant motion  
 under Rule 60(b). See Fed. R. Civ. P. 59(e) (requiring that all  
 motions submitted pursuant to this rule be filed within ten days  
 of entry of judgment or order).

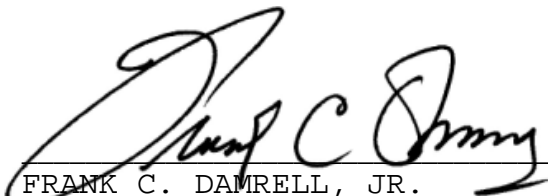
1 of clear error, as in this case, the moving party must do more  
2 than repeat arguments made in the underlying motion.  
3 "Reiteration of arguments originally made in support of, or in  
4 opposition to, a motion . . . do not provide a valid basis for  
5 reconsideration." Reliance Ins. Co. v. Doctors Co., 299 F. Supp.  
6 2d 1131, 1154 (D. Hawaii 2003); Backlund v. Barnhart, 778  
7 F.2d 1386, 1388 (9th Cir. 1985).

8 This is precisely what defendants have done in this motion;  
9 they simply repeat arguments they asserted in the original  
10 motion, arguments which were fully considered by the court in its  
11 order. Indeed nowhere in their papers do they identify any new  
12 facts or issues justifying reconsideration. Accordingly, the  
13 court need not restate its analysis here. There is no basis for  
14 granting the motion for reconsideration.

15 Thus, for these reasons and those stated fully in the  
16 court's order of April 30, 2007, the court DENIES defendants'  
17 motion for reconsideration.

18 IT IS SO ORDERED.

19 DATED: June 25, 2007

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23 FRANK C. DAMRELL, JR.  
24 UNITED STATES DISTRICT JUDGE  
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